

- - REMARKS - -

Claims 1-14, 16-24, 26-68, 70-78, and 80-107 are currently pending in the application. Claims 13-14, 17, 22-24, 30-52, 64-68, 71, 76-78, and 84-107 have been withdrawn from consideration. No claims have been amended by this response.

In the outstanding Office Action, claims 1-2, 7-11, 20, 29, 53—54, 59-62, 74 and 83 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,249,541 to Pratt (hereinafter “Pratt”) in view of U.S. Patent No. 7,056,293 to Reeves et al. (hereinafter “Reeves”). Claims 3-6, 21, 25-28, 55-58, 75 and 80-82 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Pratt in view of Reaves, and further in view of U.S. Patent No. 4,966,162 to Wang (hereinafter “Wang”). Claims 16, 18-19, 70 and 72-73 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Reaves in view of U.S. Patent No. 6,108,439 to Ishiguro (hereinafter “Ishiguro”). The rejections under 35 U.S.C. § 103(a) are respectfully traversed.

Independent claim 1 is directed to an apparatus for collecting a cytology sample, wherein the apparatus comprises a needle, a stylet and a cytology collection device. Both the needle and the cytology collection device are adapted to extend through the lumen of the needle, although not at the same time. The needle comprises an elongate flexible shaft that is adapted to extend through the working channel of an endoscope. Thus, the apparatus is specifically adapted to collect a cytology sample from a remote location with the patient. Independent claim 53 is directed to a method of collecting a cytology sample by providing an apparatus having these same limitations. The apparatus and method are neither disclosed nor suggested by the prior art.

Pratt is directed to biopsy device that comprises an elongate needle (22) that is adapted to aspirate cellular tissue via suction supplied by a syringe attached to the proximal end of the needle. Pratt does not, however, teach the use of a cytology collection device that is adapted to be inserted through the lumen of the needle and extended beyond the distal end of the needle in order to collect the cytology sample. The Examiner acknowledges that Pratt fails to teach a cytology collection device. The Examiner nevertheless asserts that a cytology collection device is taught by Reeves, and that it would be obvious to combine the teachings of Reeves with Pratt. Applicant respectfully disagrees.

As previously noted, Reeves is directed to an apparatus for diagnosing and/or sampling ovarian tissue. Although Reeves discloses an introducer needle (10) through

which other devices may be inserted, it is clear that the introducer needle is not adapted to extend through an endoscope. To the contrary, the introducer needle is adapted to permit a fiber optic device to be extended therethrough. Thus, Reeves teaches away from the needle of the present invention, which must be adapted to extend through the working channel of an endoscope. Moreover, it is apparent that the introducer needle of Reeves does not comprise a flexible shaft, as further required by claims 1 and 53 of the present invention. This is not surprising since the Reeves introducer needle is not adapted to extend through the working channel of an endoscope. The Reeves introducer needle is therefore not relevant to the present invention. As a consequence, there is no basis for combining the teachings of Reeves with those of Pratt. Reeves should not and cannot be combined with Pratt. The other references likewise fail to disclose or suggest the cytology collection device absent from Pratt.

In view of the above, independent claims 1 and 53 are not rendered unpatentable in view of the prior art. The remaining non-withdrawn claims are dependent on either claim 1 or 53. Thus, these remaining non-withdrawn claims are likewise not rendered unpatentable in view of the prior art.

It is therefore believed that the application is in condition for allowance, and such allowance is now earnestly requested. If for any reason the Examiner is not able to allow the application, he is requested to contact the Applicants' undersigned attorney at (312) 321-4273.

Respectfully submitted,

  
\_\_\_\_\_  
Michael E. Milz  
Registration No. 34,880  
Attorney for Applicants

Dated: March 12, 2009

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
(312) 321-4200